

# San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

***Via Certified Mail***

September 5, 2017

Sonoma-Marin Area Rail Transit District  
ATTN: Farhad Mansourian, General Manager  
5401 Old Redwood Highway, Suite 200  
Petaluma, California 94954

AND

North Coast Rail Authority  
ATTN: Mitch Stogner, Executive Director  
419 Talmage Road, Suite M  
Ukiah, California 95482

SUBJECT: Issuance of Violation Report /Complaint for the Imposition of Administrative Civil Penalties  
(BCDC Enforcement File No. ER2016.017)

Dear Messrs. Mansourian and Stogner,

As you know, there is a violation of the McAteer-Petris Act that we have been unable to resolve with North Coast Rail Authority (NCRA) at the Commission's staff level. On June 28, 2017, after the standardized administrative fine for this violation accrued to the maximum amount of \$30,000, Commission staff sent a letter to David Anderson, NCRA's representative, to which SMART and NCRA were copied, providing notice that after August 2, 2017, BCDC staff would commence a formal enforcement proceeding.

Therefore, as directed by the Executive Director, we are commencing a formal enforcement proceeding as of the date of this Violation Report/Complaint for the Imposition of Administrative Civil Penalties ("Violation Report/Complaint") that sets forth the Commission staff's allegations. We are sending this Violation Report/Complaint to both SMART and NCRA because the solution to resolving the violation may exceed NCRA's obligations under the terms of the operational agreement between SMART and NCRA.

Section 11322 of the Commission's regulations (14 CCR) provides you the opportunity to submit a Statement of Defense within thirty-five (35) days of the mailing date of this Report/Complaint (i.e., October 10, 2017). On November 2, 2017, the Enforcement Committee, a six-member subcommittee of the Commission, will hold a public hearing to consider the facts of this case and determine whether it should recommend that the full

Commission issue a cease and desist and civil penalty order. The full Commission will make the final determination of whether to issue a cease and desist and civil penalty order after considering the Enforcement Committee's recommended enforcement decision.

We encourage SMART and NCRA to determine whether one or both agencies will take responsibility for planning, coordinating, and funding the resolution of this violation, but in any case, SMART and NCRA should be prepared to present and support your positions in your Statement of Defense and subsequently at the Enforcement Committee hearing.

Enclosed are the following documents:

1. Violation Report/Complaint
2. Statement of Defense form; and
3. A copy of Chapter 13 of the Commission's regulations that govern the enforcement process.

You can receive copies of any of these documents via e-mail by contacting Greg Ogata at [gregory.ogata@bcdca.gov](mailto:gregory.ogata@bcdca.gov).

Please feel free to contact me by phone at (415) 352-3668 or by email at [mtrujillo@bcdca.gov](mailto:mtrujillo@bcdca.gov) to discuss any questions or concerns you may have.

Sincerely,



MATTHEW TRUJILLO

Coastal Program Analyst II

MT/go

cc: David Anderson, American Rail Engineers

Enc.

# San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

BCDC Enforcement File No.: ER2016.017  
BCDC Permit No.: NOI2010.024  
Date Mailed: September 5, 2017  
35th Day After Mailing: October 10, 2017  
60th Day After Mailing: November 4, 2017  
Hearing Date: November 2, 2017

**VIOLATION REPORT/COMPLAINT  
FOR THE IMPOSITION OF ADMINISTRATIVE CIVIL PENALTIES  
ENFORCEMENT INVESTIGATION NO. ER2016.017  
NORTH COAST RAIL AUTHORITY AND SONOMA-MARIN AREA RAIL TRANSIT DISTRICT**

**FAILURE TO RESPOND TO THIS VIOLATION REPORT/COMPLAINT FOR THE ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES BY COMPLETING THE ENCLOSED STATEMENT OF DEFENSE FORM AND ENCLOSING ALL PERTINENT DECLARATIONS UNDER PENALTY OF PERJURY, PHOTOGRAPHS, LETTERS, AND OTHER WRITTEN DOCUMENTS COULD RESULT IN A CEASE AND DESIST ORDER, A PERMIT REVOCATION ORDER, OR A CIVIL PENALTY ORDER BEING ISSUED TO YOU, OR A SUBSTANTIAL ADMINISTRATIVE CIVIL PENALTY BEING IMPOSED ON YOU WITHOUT YOUR HAVING AN OPPORTUNITY TO CONTEST THEM OR TO INTRODUCE ANY EVIDENCE.**

The San Francisco Bay Conservation and Development Commission (BCDC) (the "Commission") is issuing this Violation Report/Complaint for the Administrative Imposition of Civil Penalties ("Violation Report/Complaint") and Statement of Defense Form, because the Commission's staff ("staff") believes that you are responsible for two or more violations of the McAteer-Petris Act. The report contains a summary of all the pertinent information that staff currently has concerning the violation and reference to all the pertinent evidence upon which the staff currently relies. All the evidence referred to in this Violation Report/Complaint is available in BCDC Enforcement File No. ER2016.017, located at the Commission's office. You can review these materials at the Commission's office, or have copies made at your expense, or both, by contacting Greg Ogata of the Commission's staff at telephone number (415) 352-3600. This Violation Report/Complaint also informs you of the nature of the violation, so that you can fill out the enclosed statement of defense form and otherwise be prepared for Commission enforcement proceedings to come.

Issuance of this Violation Report/Complaint and the enclosed Statement of Defense Form is the first step in formal Commission enforcement proceedings. Subsequently, either the Commission or its enforcement committee may hold a public hearing on this matter, and the Commission will determine what, if any, enforcement action to take.

Careful reading of and timely response to these materials is essential to allow you to present your side of the matter to the Commission. A copy of the Commission's enforcement regulations is also included so that you can fully understand the Commission's enforcement procedures. If you have any questions concerning either the Violation Report/Complaint, the enclosed Statement of Defense Form, the procedures that the Commission and its enforcement committee follow, or anything else pertinent to this matter, please contact Matthew Trujillo of the Commission's staff at telephone number (415) 352-3633. Thank you for your cooperation.

**I. Entities believed responsible for the illegal activity.**

**Property Owner Name:** Sonoma-Marín Area Rail Transit District  
**Address:** ATTN: Farhad Mansourian, General Manager  
 5401 Old Redwood Highway, Suite 200  
 Petaluma, California 94954

**Easement Holder Name:** North Coast Rail Authority  
**Address:** ATTN: Mitch Stogner, Executive Director  
 419 Talmage Road, Suite M  
 Ukiah, California 95482

**II. Brief description of the nature of the illegal activity:**

Unauthorized placement of approximately four (4) cubic yards of dirt and gravel, stakes, and wooden boards in the Commission's Bay and 100-foot shoreline band jurisdictions, as originally placed and as subsequently redistributed by tidal water flowing through the site. This activity constitutes a violation of Section 66632 of the McAteer-Petris Act.

**III. Name of owners who control property on which illegal activity occurred:**

The Sonoma-Marín Area Rail Transit District (SMART), as fee owner, and the North Coast Rail Authority (NCRA), as easement holder.

**IV. Description of and location of property on which illegal activities occurred:**

The Marin County assessor's parcel number of the site is 157-051-09. The approximately 144,617-square-foot, 3.32-acre property is located at the end of Hunters Club Road in Novato, Marin County. The Lombard Segment of the Northwestern Pacific Railroad (which crosses the nearby Petaluma River via the Black Point Swing Bridge) bisects the property from the northeast to the southwest. The northern side of the property contains the vacant Black Point Swing Bridge operator's house. The southern side of the property contains approximately 1.25 acres of the 5-acre Beattie Marsh, and Hunter's Club Road, which



provides vehicular access over the tidal marsh to the bridge operator's house and is the site of the violations.

**V. Approximate dates illegal activities occurred:**

The violation cited in Section II.A occurred in March 2016.

**VI. Summary of all pertinent information currently known to the staff in the form of proposed findings, with references to all pertinent supporting evidence contained in the staff's enforcement file:**

This Violation Report/Complaint is based on the following proposed findings. The administrative record in support of these proposed findings includes: (1) all documents and other evidence cited herein; and (2) all additional documents listed in the Index of Administrative Record attached hereto as Exhibit A. You may review the administrative record at BCDC's office and/or obtain copies of any or all documents contained in the record at your expense.

- A. **Relevant Files.** 1. NOI 2010.024, Notice of Intent to Proceed Under BCDC Regionwide Permit No. 3, as amended through December 18, 2008; and 2. Enforcement File No. ER2016.017.
- B. The violation is within the Commission's Bay and 100-foot shoreline band jurisdictions at the northern end of Hunters Club Road in Novato, Marin County. The site of the violation is where the road crosses an approximately 565-yard-long, unnamed slough that runs through Beattie Marsh, parallel to the Northwestern Pacific railroad line to the north, providing a tidal connection between the marsh and the Petaluma River via a culvert under the road.<sup>1</sup> Prior to 2016, the road provided vehicular access to the Black Point Swing Bridge operator's house located on the other side of the railroad line. (See Exhibits A and B.)
- C. Historic aerial photographs of the site taken by Air-Photo Company, Inc., dated November 10, 1969, indicate that Hunters Club Road is a structure that preexisted the enactment of the McAteer-Petris Act (MPA) and the creation of the Commission. However, all maintenance, repair, replacement, or removal activities and substantial changes in use that occurred after the enactment of the MPA require a Commission permit.
- D. NCRA was formed in 1989 under the North Coast Railroad Authority Act, California Government Code Sections 93000, *et seq.*<sup>2</sup>

<sup>1</sup> Government Code Section 66610(a) states that the "San Francisco Bay" includes "all sloughs" tidally connected to the Bay as well as all "marshlands" lying between mean high tide and five feet above mean sea level. 14 CCR, Section 10122 defines "slough" to mean, in relevant part, "a stream of water that passes through a tidal marsh...extending up to the shoreline...." Since the site of the violation meets the above-quoted definition of a "slough," it falls within the Commission's SF Bay jurisdiction.

<sup>2</sup> History of the North Coast Railroad Authority - [www.northcoastrailroad.org/history.html](http://www.northcoastrailroad.org/history.html), accessed August 18, 2017

- E. On May 24, 1995, NCRA, the Golden Gate Bridge, Highway, and Transportation District, and the County of Marin established a joint powers authority named the Northwestern Pacific Railroad Authority (NWPRA).<sup>3</sup>
- F. On April 30, 1996, NWPRA purchased the parcel described above in Section IV from the Southern Pacific Transportation Company, and continues to be the parcel owner of record.<sup>4</sup> At or around that time, NCRA accepted a freight easement over the Northwestern Pacific Right of Way south of Healdsburg (the Lombard Segment), which includes the rail line that crosses this parcel.<sup>5</sup>
- G. On August 16, 1996, NCRA and NWPRA entered into an operating agreement wherein NCRA assumed operating and maintenance responsibilities over the Lombard Segment.<sup>6</sup>
- H. On June 13, 2003, via a memorandum of understanding, NWPRA's assets were transferred to SMART. Therefore, SMART is the current parcel owner.<sup>7</sup>
- I. NWPRA was dissolved in 2004 by a Dissolution Agreement between the Golden Gate Bridge, Highway and Transportation District, the County of Marin, and NCRA.
- J. On September 13, 2006, NCRA and the Northwestern Pacific Railroad Company (NWP) entered into a lease agreement for NWP to provide freight service along the Lombard Segment.<sup>8</sup>
- K. On December 14, 2010, the Executive Director of the BCDC approved Notice of Intent to Proceed No. NOI 2010.024 under BCDC Regionwide Permit No. 3, as submitted by NCRA and SMART, to install remote activation equipment at the Black Point Swing Bridge.
- L. On June 22, 2011, SMART and NCRA executed an Operating and Coordination Agreement. This agreement superseded the 1996 operating agreement between NCRA and NWPRA (and SMART, NWPRA's successor in interest), and continued NCRA's exclusive easement for the operation of freight service on the Lombard Segment, defined NCRA's maintenance responsibilities, and affirmed NWP as NCRA's operator.
- M. On March 25, 2016, Jim Armstrong, an interested party, on behalf of the Beattie Trust, the owner of the adjacent parcel located at 172 Beattie Avenue (APN No. 157-061-01), sent a letter to the Marin County Department of Public Works requesting that the county issue a stop-work order to prevent NCRA from conducting work on the road until an

<sup>3</sup> Dissolution Agreement Between the Golden Gate Bridge, Highway and Transportation District, the County of Marin and the North Coast Railroad Authority, dated 2004.

<sup>4</sup> RealQuest.com Property Detail Report, dated July 6, 2017.

<sup>5</sup> Memorandum to the NCRA Board of Directors from Christopher Near, NCRA Legal Counsel, dated June 5, 2011.

<sup>6</sup> Ibid.

<sup>7</sup> Dissolution Agreement Between the Golden Gate Bridge, Highway and Transportation District, the County of Marin and the North Coast Railroad Authority, dated 2004.

<sup>8</sup> Operating & Coordination Agreement for the Northwestern Pacific Line between SMART and NCRA, dated June 20, 2011.

environmental impact review could be performed.<sup>9</sup> He claimed that NCRA had on multiple occasions conducted repairs to the road without permits or environmental review. Mr. Armstrong attached a series of photographs to his letter which depict the road being inundated and washed out by tidal flows, presumably as a result of winter storms, and road debris in the slough. (See Exhibits C and D.)

- N. On March 29, 2016, BCDC Chief of Enforcement Adrienne Klein received a complaint from a member of the public alleging that a retaining wall was being constructed in the Bay at the mouth of a slough under the Black Point Swing Bridge. The complainant expressed concerns that the retaining wall would block the flow of water and cause flooding.<sup>10</sup>
- O. On April 11, 2016, Ms. Klein spoke to Gregg Jennings at SMART on the telephone about the unauthorized work. He told her that the section of Hunters Club Road that crosses the marsh had washed out, and NCRA resolved the issue by placing earthen fill on the road and repairing the retaining wall and culvert. He explained that NCRA was responsible for the repairs per to the 2011 operating agreement with SMART. Ms. Klein informed Mr. Jennings that the repair work constituted the placement of fill within an area subject to the jurisdiction of the McAteer-Petris Act and required the Commission's review and approval to remain in place.
- P. On April 11, 2016, Ms. Klein sent Mr. Jennings an e-mail asking for detailed information about the road repair work.
- Q. On April 12, 2016, Ms. Klein sent Mr. Jennings an e-mail informing him that Marc Zeppetello, Chief Counsel, BCDC, had affirmed that NCRA is required to seek and obtain a BCDC permit for all work in BCDC's jurisdiction. She asked Mr. Jennings to provide a copy of its operating agreement with NCRA, and highlight the sections that empowered NCRA to seek and obtain project permits and undertake projects independently of SMART's oversight. Finally, she suggested that either NCRA or SMART should commence the process of seeking a BCDC permit for the unauthorized work.
- R. On April 25, 2016, Ms. Klein sent Mr. Jennings an e-mail asking that either he or a NCRA representative send her photographs of the unauthorized work, a project description, a copy of the operating agreement and contact information for NCRA. Mr. Jennings replied to Ms. Klein via e-mail affirming that NCRA is the responsible party for the unauthorized fill in the marsh. Ms. Klein replied to Mr. Jennings by email on April 25<sup>th</sup> asking him for a copy of the operating agreement between SMART and NCRA. Mr. Jennings replied by email the same day stating that he would provide a copy of the operating agreement.

<sup>9</sup> Mr. Armstrong presented a copy of the letter, entitled, "Northwest Pacific Railroad etal [sic] APN. 157-051-09 Request for Project Information / Environmental & property damage Stop Work Request / Project and Environmental Permits Required," to Ms. Klein when she visited the site on June 24, 2016 to document the violation. His letter presumed that the Northwest Pacific Railroad was the entity conducting the work, and was evidently unaware that NCRA was responsible for the work.

<sup>10</sup> BCDC Violation Investigation Report Form dated March 29, 2016.

- S. On May 23, 2016, Ms. Klein mailed a letter pursuant to 14 CCR Section 11386(b) ("Enforcement Letter One") to Messrs. Stogner and Jennings, in which she notified them of the complaint received on March 29, 2016 about the construction of the retaining wall, and proceeded to recount the details of the telephone call between herself and Mr. Jennings that took place on April 11, 2016. The letter also summarized the communications contained in the e-mails dated April 11, 2016, April 12, 2016 and April 25, 2016, and informed Messrs. Stogner and Jennings that as of the date of the letter she had not received any additional information, responses, or documentation from either party, and they had thirty-five (35) days to resolve the violation, or else they would be subject to the imposition of standardized administrative fines.
- T. On May 28, 2016, David Anderson, President and CEO of American Rail Engineers, representing NCRA in this enforcement case, sent an email to Ms. Klein and Mitch Stogner, Executive Director of NCRA, in which he included a statement from Jacob Park, a manager at NWP, describing the work that had taken place over the Bay, and included an annotated photograph of the work as it was occurring. According to Mr. Park's statement, NWP placed approximately five (5) tons (~4 cubic yards) of dirt on Hunters Club Road (which he mistakenly called Harbor Drive), and "put back into place" the top two timbers of the retaining wall. He stated that the tidal marsh was "never touched" and that NWP was aware of, and sought to avoid, the risk of damming the slough that runs under the road into Beattie Marsh, which would cause flooding. He failed to provide the dates during which the work had taken place. (See Exhibit E.)
- U. On May 31, 2016, a telephone discussion between Ms. Klein and Mr. Anderson took place, wherein, in response to the e-mail he had sent her on May 28, 2016, she asked him for more photographs of the site and more information about the scope of the unauthorized roadwork. She advised him to seek and obtain a permit granting after-the-fact authorization for the work. Mr. Anderson stated that he would take additional photographs during his upcoming trip to the Bay Area and send them to her.
- V. On May 31, 2016, Ms. Klein sent Messrs. Anderson and Stogner an email in which she asked him to tell her the date and time the photograph that he had sent her on May 28, 2016 was taken. She also asked him for photographs depicting pre-work site conditions and other tidal phases.
- W. On June 24, 2016, Ms. Klein visited the site, took photographs, including of the slough and retaining wall (see Exhibit F), and, by chance, met two local residents, who told her that the roadwork took place in March 2016. They said the width of the road was widened approximately 6 feet and the top of the road and the retaining wall were raised. Prior to the work, the top of the road was so low that the tides would wash over the road twice a day. The daily over-topping would erode the top of the road, so SMART would add gravel to the road once a year to replace the eroded material. They also stated that since the top of the road and the retaining wall were raised, the hydrology of the neighborhood had been affected. There was less water flow and the culvert under the road became smaller. There was also rock and "other nonnative material" visible in the mud in front of the culvert.

- X. On June 28, 2016, John Riley, a project manager at SMART, sent a letter to Ms. Klein, and copied Mr. Gamlen in response to Ms. Klein's May 23, 2016 Enforcement Letter One. Mr. Riley explained that NCRA alone is responsible for the violation.
- Y. On July 12, 2016, Ms. Klein sent a letter to Mr. Anderson, reiterating that NCRA appears to be responsible for the unauthorized work in the Commission's jurisdiction, and should either secure a permit for after-the-fact authorization of the work, or remove it. She also informed Mr. Anderson that standardized administrative fines had begun to accrue as of June 27, 2016, and would continue to accrue until NCRA either obtained a Commission permit for the work or removed the unauthorized fill.
- Z. On August 22, 2016, Mr. Anderson sent an e-mail to Ms. Klein and Mr. Stogner informing her that a survey of the site had been completed and a grading plan was pending, and he would be meeting with a wetlands specialist to review the plan and "the overall area." He included annotated photographs of the site as it was being surveyed on August 3, 2016. One of the photographs appeared to demonstrate that the tidal water was flowing freely through the culvert. The remaining photos indicate the location of the top of the culvert, previously unseen by staff, and the presence of a water line under the driveway and a USGS tidal benchmark. Ms. Klein replied to Mr. Anderson by e-mail the same day to thank him for the progress report, and remind him to submit a permit application as soon as possible.
- AA. On January 13, 2017, Mr. Anderson spoke to Ms. Klein on the telephone and reported that he had a grading plan and a survey. Ms. Klein recommended that the wetlands specialist assist him with preparing a BCDC permit application.
- BB. On January 28, 2017, the standardized fines for Violation 1, as identified in Ms. Klein's July 12, 2016 letter, reached the administrative maximum of \$30,000.
- CC. On February 20, 2017, Mr. Anderson sent an e-mail to Ms. Klein and Mr. Stogner, in which he informed Ms. Klein that the road was damaged by winter storms and had been closed. There were no plans to repair the road, because it was no longer needed to access the bridge operator's house due to the death of the occupant.<sup>11</sup> He noted that SMART was in the process of determining whether or not to remove the road. He also noted that a nearby resident had contacted him to request that NCRA address the erosion of the bank of the slough, which may be affecting residents' property lines, and stated that to address the issue a new channel would need to be cut north of the existing slough as the removal of the roadway alone would not be sufficient to ameliorate erosion issues. A photograph of the damaged road was attached to the e-mail demonstrating that a deep, wide furrow had been cut into the surface of the road and the top of the retaining wall was gone.

<sup>11</sup> Once Black Point Swing Bridge had become remote-operated, a residing bridge operator was no longer needed on-site. The occupants of the bridge operators house were allowed to remain until their deaths, after which time the house would be abandoned.

- DD. On March 29, 2017, Mr. Anderson sent an e-mail to Ms. Klein in which he informed her that the missing components of the retaining wall were located inland of the bridge and had been removed from the site.
- EE. On April 19, 2017, Ms. Klein e-mailed Mr. Anderson informing him that despite the fact that the road and retaining wall had been damaged and would not be repaired, NCRA was still required to seek and obtain an after-the-fact BCDC permit for the March 2016 repair work. Ms. Klein also informed Mr. Anderson that the gravel fill that must have been discharged into the slough as a result of the storm damage to the access road would have to be removed, and that NCRA would be required to seek and obtain a BCDC-staff-approved fill removal plan to do so, and should develop and submit this plan to her. She reminded Mr. Anderson that he had not yet submitted a BCDC permit application, and should do so immediately; she requested a copy of the site survey and grading plan that he had described on January 13, 2017; and she informed Mr. Anderson that failure to resolve the violation that she had identified in her May 23, 2016 letter by May 28, 2017 would subject NCRA to a formal enforcement proceeding, which could lead to the issuance of a cease and desist order and civil penalty order.
- FF. On May 15, 2017, during a phone call Mr. Anderson stated to Ms. Klein that he had recommended to NCRA and SMART that they resolve the violation by removing the road (and the bridge operator's house). He said that SMART supports this project in concept, subject to the SMART Board's approval, but there was no formal commitment or funding to do so at the time. SMART would have to conduct the project because road removal exceeds the scope of the operations and maintenance agreement between SMART and NCRA. Mr. Anderson said he would be meeting with representatives of NCRA, NWP and SMART to discuss the project in the ensuing weeks.
- GG. On May 15, 2017, Mr. Anderson sent an e-mail to Ms. Klein and Mr. Stogner in which he reiterated his proposal to remove the access road, and attached a copy of the site survey and grading plan described in his August 22, 2016 e-mail. The survey results indicate that the slough, culvert and much of the surrounding marshland are within the Commission's San Francisco Bay jurisdiction.
- HH. On May 16, 2017, Mr. Anderson sent an e-mail to Ms. Klein and Mr. Stogner in which he briefly summarized their April 15, 2017 phone call, and proposed a meeting between him, Ms. Klein and SMART in May, June or July 2017. In closing, he stated that the debris in the slough was stable for the time being.
- II. On June 16, 2017, Matthew Trujillo, BCDC Enforcement Analyst, called Mr. Anderson to inform him that staff would be initiating a formal enforcement proceeding for failing to resolve the violations by May 28, 2017 as Ms. Klein had stated in her April 17, 2017 e-mail. Later that day, Mr. Trujillo sent an e-mail to Mr. Anderson in which he summarized the phone call.
- JJ. On June 18, 2017, Mr. Anderson sent Mr. Trujillo an e-mail, and copied Ms. Klein and Mr. Stogner in which he listed three challenges that had theretofore prevented him from pursuing a permit application to authorize the work on the access road and culvert, and

remove the debris in the slough: 1) the roadway grading project (i.e., the placement of approximately 5 tons of gravel and dirt and the retaining wall over the slough) had been undone by storms during the winter of 2016/2017, and there was no plan to regrade the roadway; 2) SMART, the owner of the roadway, had indicated to him that they would “likely” seek a Commission permit to remove the roadway; and 3) the removal of the debris should be included in SMART’s permit, should they opt to pursue one.

KK. On June 28, 2017, Mr. Trujillo sent a letter to NCRA, in care of Mr. Anderson, with copies to Mr. Stogner, Mr. Jennings, and Xavier Fernandez at the San Francisco Bay Regional Water Quality Control Board, informing NCRA that, pursuant to 14 CCR Section 11386(h), after thirty-five (35) days from the date of the letter, NCRA would no longer have the opportunity to resolve this enforcement matter using the standardized administrative fine process; and that staff would commence a formal enforcement proceeding resulting in the issuance of this Violation Report/Complaint and a public hearing in front of the Commission’s Enforcement Committee. Mr. Trujillo ended the letter by asking Mr. Anderson to submit a completed permit application, and attached a copy of the Chapter 13 of BCDC’s regulations.

LL. On July 14, 2017, Mr. Trujillo visited the site to view and photograph the damage to the road and the extent of the debris in the slough and surrounding marshland. Mr. Trujillo estimated that approximately 25% of the road washed eastward into the slough, that the debris extends about 150 feet or more into the slough, and that while the culvert appears to be functioning, a large mound of debris is located approximately five feet from the mouth of the culvert and appears to be impeding water flow and causing water to pool around the culvert with unknown effects on the hydrology or health of the local ecosystem, including Beattie Marsh to the southwest. Near the culvert, there is evidence of recent erosion on the southern bank of the slough, which has exposed underground utility lines, and may be threatening the stability of an adjacent utility pole. (See Exhibits G and H.)

MM. As of the date of this Violation Report/Complaint, staff has received neither a response to this letter nor a permit application.

#### **VII. Provision of law that has been violated:**

Government Code (McAteer-Petris Act) Section 66632. Permit for Fill, Extraction of Materials or Substantial Change in Use of Land, Water or Structure; Application for Permits.

#### **VIII. Amount of the administrative civil penalty proposed by staff:**

Staff proposes a total penalty of \$30,000 for the violation cited in Section II of this Violation Report/Complaint under Section 66641.5(e) of the McAteer-Petris Act.

#### **IX. Any other statement or information that the staff believes is either pertinent to the alleged violation or important to a full understanding of the alleged violations:**

SMART is being named as an entity responsible for this violation because it owns the subject property where the authorized work occurred and because the solution to resolving the violation may exceed the terms of the operational agreement with NCRA.





Google Earth

Map data ©2017 Google Imagery

Exhibit A: Birds-eye view of the vicinity of the violation site, Novato, Marin County, ca. May 2017.







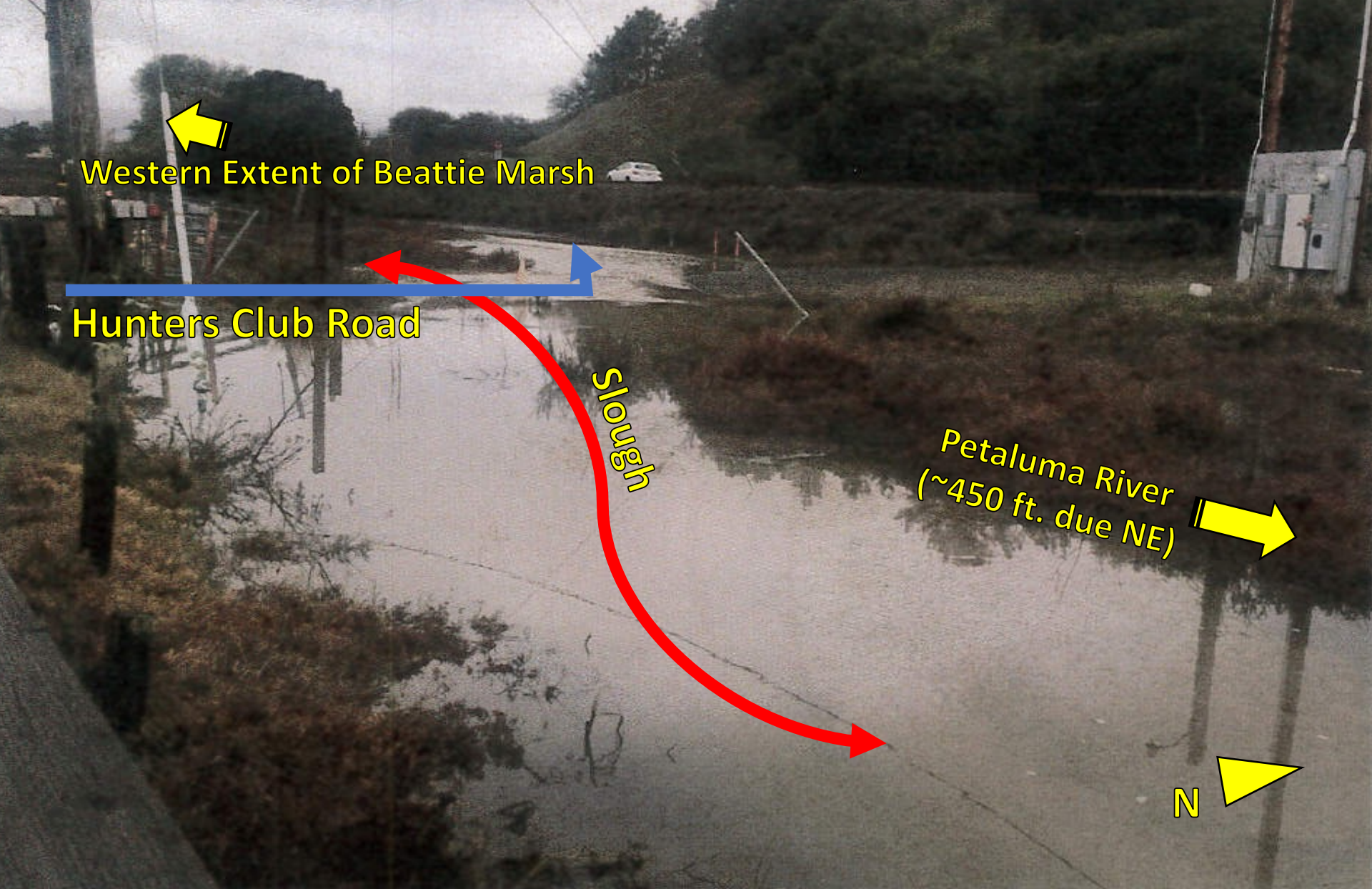


Exhibit C: Photograph of tidal waters inundating Hunters Club Road and the access road to the bridge operators house, ca. March 2016, submitted by Jim Armstrong to the County of Marin on March 25, 2016, and to BCDC staff on June 24, 2016.





Petaluma River  
(~450 ft. due NE)

Western Extent of Beattie Marsh

N

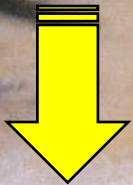
Exhibit D: Photograph of Hunters Club Road/retaining wall damage, ca. March 2016, submitted by Jim Armstrong to the County of Marin on March 25, 2016, and to BCDC staff on June 24, 2016.



Top two headwall  
timbers replaced

5 Tons of fill placed on  
Harbor Drive

Petaluma River  
(~450 ft. due NE)



N

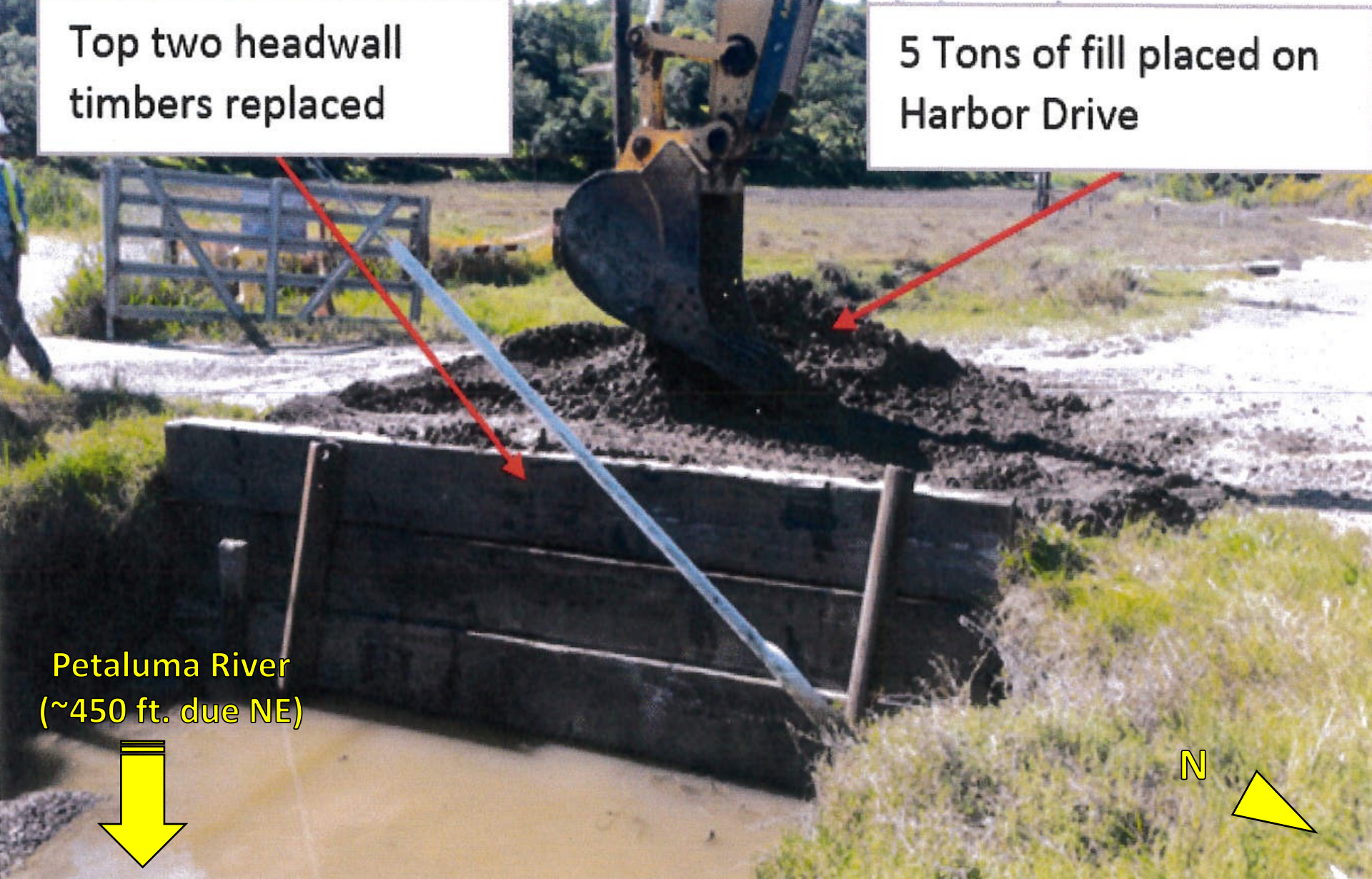


Exhibit E: Annotated photograph of the unauthorized road repair work (ca. March 2016) submitted to Adrienne Klein by David Anderson on May 28, 2016. Photograph taken and annotated by an employee of the Northwestern Pacific Railroad Company.



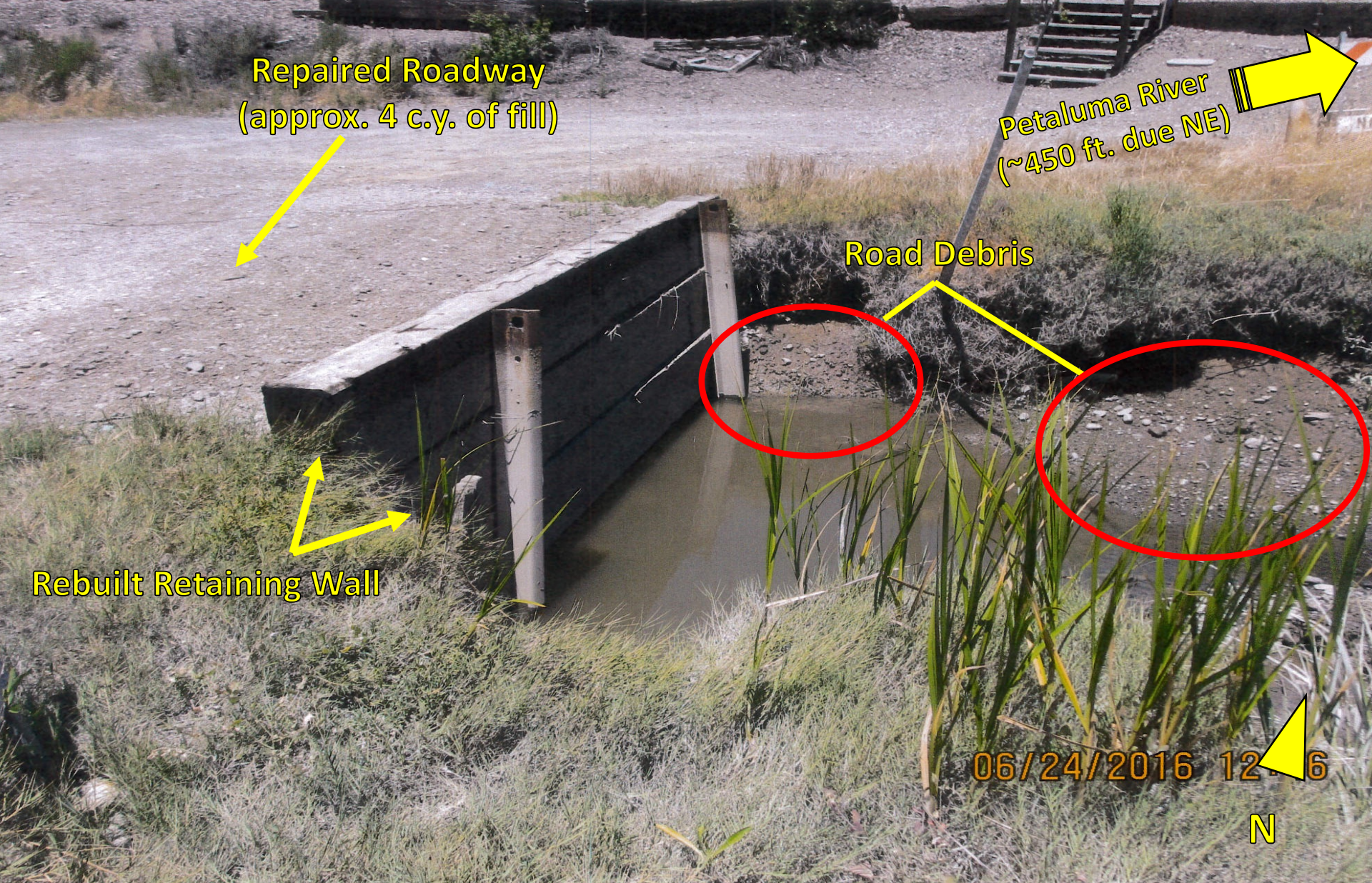


Exhibit F: Repaired road and retaining wall after the completion of the unauthorized repair work in March 2016. Debris from the prior road damage episode(s) was left in the slough. (Photo credit: BCDC staff, June 24, 2016)





Exhibit G: Water damaged the surface of Hunters Club Road and retaining wall, and distributed road debris in the foreground during Winter 2017. Tidal water is pooling at the culvert (submerged) with unknown effects on the hydrology of the western extent of Beattie Marsh consisting of approximately 237,000 square feet. (Photo credit: BCDC staff, July 14, 2017)





Petaluma River

Hunters Club Road

07/14/2017

N



07/14/2017

Exhibit H: Road debris is dispersed at least 100 feet bayward into the slough, as photographed from the road. The full extent of the debris field is unknown. (Photo credit: BCDC staff, July 14, 2017)



**INDEX OF SUPPORTING DOCUMENTS FOR SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AND  
NORTH COAST RAIL AUTHORITY PERMIT VIOLATION REPORT AND COMPLAINT**

	Document Description	Date
1	Aerial photographs of the violation site by Air-Photo Company, Inc.	11/10/1969
2	Quitclaim deed transferring fee ownership of the parcel from Southern Pacific Transportation Company to Northwestern Pacific Railroad Authority	4/30/1996
3	Surface Transportation Board Finance Docket No. 32910 entitled, "Northwestern Pacific Railroad Authority; Acquisition Exemption; Former Northwestern Pacific Railroad Line From Southern Pacific Transportation Company and Golden Gate Bridge, Highway and Transportation District," Federal Register Vol. 61, No. 97	5/17/1996
4	Dissolution Agreement Between the Golden Gate Bridge, Highway and Transportation District, the County of Marin and the North Coast Railroad Authority	2004
5	North Coast Railroad Authority press release entitled, "NCRA Approves Operator Contract"	9/14/2006
6	Notice of Intent of Proceed No. NOI2010.024 Under BCDC Regionwide Permit No. RWP-3, As Amended Through December 18, 2008	12/14/2010
7	Memorandum to the NCRA Board of Directors from Christopher Near, NCRA Legal Counsel, entitled, "Operating Agreement with SMART"	6/5/2011
8	Operating and Coordination Agreement for the Northwestern Pacific Line between SMART and NCRA	6/20/2011
9	Letter and photographs (taken ca. March 2016) from Jim Armstrong to the Marin County Department of Public Works "Northwest Pacific Railroad etal [sic] APN. 157-051-09 Request for Project Information / Environmental & property damage Stop Work Request / Project and Environmental Permits Required"	3/25/2016
10	BCDC Violation Investigation Report Form	3/29/2016
11	Handwritten notes of phone call between Adrienne Klein and Gregg Jennings	4/11/2016
12	E-mail exchange between Adrienne Klein and Gregg Jennings entitled, "Apparently unauthorized road repair in a tidal channel connected to the Petaluma River next to the Back [sic] Point Bridge"	4/11/2016, 4/12/2016, 4/14/2016
13	E-mail exchange between Adrienne Klein and Gregg Jennings entitled, "Blackpoint Bridge Automation Project"	4/25/2016
14	Letter from Adrienne Klein to Mitch Stogner and Gregg Jennings entitled, "Unauthorized reconstruction of a washed out road in the Petaluma River, in SF Bay, located west of the Black Point Bridge and east of Grandview Avenue (which intersects with Beattie Avenue and Harbor Drive) in Novato, Marin County (Enforcement File No. ER2016.017)"	5/23/2016
15	E-mail exchange between David Anderson and Adrienne Klein entitled, "Harbor Drive Emergency Repair"	5/28/2016, 5/31/2016
16	Handwritten notes of phone call between Adrienne Klein and David Anderson	5/31/2016
17	Site photographs and typed site visit notes entitled, "NCRA Site Visit on Friday, June 24, 2016 by Adrienne Klein"	6/24/2016
18	Letter from John Riley to Adrienne Klein entitled, "Enforcement File No. ER2016.017"	6/28/2016
19	Letter from Adrienne Klein to David Anderson entitled, "Violation 1 - Unauthorized reconstruction of a washed out road and Violation 2 - Unauthorized installation of bridge authomation equipment, in the Petaluma River, in SF Bay , located west of the Black Point Bridge and east of Grandview Avenue (which intersects with Beattie Avenue and Harbor Drive) in Novato, Marin County (Enforcement File No. ER2016.017)"	7/12/2016
20	E-mail exchange between David Anderson and Adrienne Klein entitled "BCDC Enforcement Case No. ER2016.017 NCRA at Black Point Bridge, Novato, Marin County"	7/27/2016, 8/22/2016, 2/20/2017, 3/28/2017, 3/29/2017, 4/19/2017, 5/15/2017, 5/16/2017
21	Handwritten notes of phone call between Adrienne Klein and David Anderson	1/13/2017
22	E-mail exchange between Matthew Trujillo and David Anderson entitled, "Phone Call Follow-Up"	6/16/2017, 6/18/2017
23	Letter from Matthew Trujillo to NCRA, c/o David Anderson, entitled, "Termination of Standardized Fine Process to Resolve Violations of the McAteer-Petris Act; BCDC Enforcement File No. ER2016.017"	6/28/2017



	Document Description	Date
24	RealQuest.com Property Detail Report for Property Located at 3026 Hunters Club Road, Novato, Marin County, accessed July 6, 2017	7/6/2017
25	Site photographs taken by Matthew Trujillo	7/14/2017
26	History of the North Coast Railroad Authority - <a href="http://www.northcoastrailroad.org/history.html">www.northcoastrailroad.org/history.html</a> , accessed August 18, 2017	8/18/2017

## Statement of Defense Form

### Enforcement Investigation ER2016.017

#### North Coast Rail Authority (NCRA) and Sonoma-Marin Area Rail Transit District (SMART)

FAILURE (1) TO COMPLETE THIS FORM, (2) TO INCLUDE WITH THE COMPLETED FORM ALL DOCUMENTS, DECLARATIONS UNDER PENALTY OF PERJURY, AND OTHER EVIDENCE YOU WANT PLACED IN THE RECORD AND TO BE CONSIDERED BY THE COMMISSION, (3) TO LIST ANY WITNESSES WHOSE DECLARATION IS PART OF THE STAFF'S CASE AS IDENTIFIED IN THE VIOLATION REPORT THAT YOU WISH TO CROSS-EXAMINE, THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE WITNESS, AND THE INFORMATION YOU HOPE TO ELICIT BY CROSS-EXAMINATION, AND (4) TO RETURN THE COMPLETED FORM AND ALL INCLUDED MATERIALS TO THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION STAFF OR TO CONTACT **MATTHEW TRUJILLO** OR **JOHN BOWERS** OF THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF BY OCTOBER 10, 2017 MEANS THAT THE COMMISSION CAN REFUSE TO CONSIDER SUCH STATEMENTS AND EVIDENCE WHEN THE COMMISSION HEARS THIS MATTER.

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU, IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF.

This form is enclosed with a violation report. The violation report indicates that you may be responsible for or in some way involved in either a violation of the Commission's laws, a Commission permit, or a Commission cease and desist order. The violation report summarizes what the possible violation involves, who may be responsible for it, where and when it occurred, if the Commission staff is proposing any civil penalty and, if so, how much, and other pertinent information concerning the possible violation.

This form requires you to respond to the alleged facts contained in the violation report, to raise any affirmative defenses that you believe apply, to request any cross-examination that you believe necessary, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the possible violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps drawings, etc. and written declarations under penalty of perjury that you want the Commission to consider as part of this enforcement hearing. This form also requires you to identify by name any person whom you may want to cross-examine prior to the enforcement hearing on this matter, the area of knowledge that you want to cover in the cross-examination, the nature of the testimony that you hope to elicit, and the reasons that you believe other means of producing this evidence are unsatisfactory. Finally, if the staff is only proposing a civil penalty, i.e., no issuance of either a cease or desist order or a permit revocation order, this form allows you alternatively to pay the proposed fine without contesting the matter subject to ratification of the amount by the Commission.

IF YOU WANT TO CROSS-EXAMINE ANY PERSON ON WHOSE TESTIMONY THE STAFF HAS RELIED IN THE VIOLATION REPORT, YOU MUST COMPLETE PARAGRAPH SEVEN TO THIS STATEMENT OF DEFENSE FORM. THIS PARAGRAPH REQUIRES YOU TO SET OUT (1) THE NAME(S) OF THE PERSON(S) YOU WANT TO CROSS-EXAMINE, (2) REFERENCES TO ANY DOCUMENTS ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (3) THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (4) THE INFORMATION THAT YOU BELIEVE CAN BE ELICITED BY CROSS-EXAMINATION, AND (5) THE REASON WHY YOU BELIEVE THIS INFORMATION CANNOT BE PRESENTED BY DECLARATION OR OTHER DOCUMENT.

You should complete the form as fully and accurately as you can as quickly as you can and return it no later than 35 days after its having been mailed to you to the Commission's enforcement staff at the address:

**San Francisco Bay Conservation and Development Commission  
455 Golden Gate Avenue, Suite 10600  
San Francisco, California 94102**

If you believe that you have good cause for not being able to complete this form within 35 days of its having been mailed, please complete it to the extent that you can and within 35 days of the mailing of the violation report send the statement of defense form completed as much as possible with a written explanation of what additional information you need to complete the form in its entirety, how long it will take to obtain the additional information needed to complete the form, and why it will take longer than 35 days to obtain the additional information, send all of this to the Commission's staff at the above address. Following this procedure does not mean that the Executive Director will automatically allow you to take the additional time to complete the form. Only if the Executive Director determines that you have shown good cause for the delay and have otherwise complete the form as much as is currently possible will be grant an extension to complete the form.

If the staff violation report/complaint that accompanied this statement of defense form included a proposed civil penalty, you may, if you wish, resolve the civil penalty aspect of the alleged violation by simply providing to the staff a certified cashier's check in the amount of the proposed fine within the 35-day time period. If you choose to follow this alternative, the Executive Director will cash your check and place a brief summary of the violation and proposed penalty along with a notation that you are choosing to pay the penalty rather than contesting it on an administrative permit listing. If no Commissioner objects to the amount of the penalty, your payment will resolve the civil penalty portion of the alleged violation. If a Commissioner objects to the proposed payment of the penalty, the Commission shall determine by a majority of those present and voting whether to let the proposed penalty stand. If such a majority votes to let the proposed penalty stand, your payment will resolve the civil penalty portion of the alleged violation. If such a majority does not let the proposed penalty stand, the Commission shall direct the staff to return the money paid to you and shall direct you to file your completed statement of defense form and all supporting documents within 35 days of the Commission's action. Of course, you also have the opportunity of contesting the fine from the outset by completing this form and filing it and all supporting documents within 35 days of its having been mailed to you.

If you have any questions, please contact as soon as possible **MATTHEW TRUJILLO** or **JOHN BOWERS** of the Commission Enforcement Staff at telephone number **415-352-3600**.

1. Facts or allegations contained in the violation report that you admit (with specific reference to the paragraph number in the violation report):

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2. Facts or allegations contained in the violation report that you deny (with specific reference to paragraph number in the violation report):

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3. Facts or allegations contained in the violation report of which you have no personal knowledge (with specific reference to paragraph number in the violation report):

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4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any documents, photographs, maps, letters, or other evidence that you believe are relevant, please identify it by name, date, type, and any other identifying information and provide the original or a copy if you can):

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5. Any other information, statement, etc. that you want to make:

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6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this statement to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, title and enclose a copy with this completed form):

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7. Name of any person whose declaration under penalty of perjury was listed in the violation report as being part of the staff's case who the respondent wants to cross-examine, all documents about which you want to cross-examine the person, area or areas of information about which the respondent wants to cross-examine the witness, information that the respondent hopes to elicit in cross-examination, and the reason(s) why some other method of proving this information is unsatisfactory:

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**§ 11211. Submittal of an Amendment.**

(a) Within ten (10) working days of receipt by the Commission of a proposed amendment to the local protection program or component thereof, the Executive Director shall determine whether the proposed amendment meets the submittal requirements of Section 11210.

(b) If the Executive Director determines that the proposed amendment and supporting materials meet the submittal requirements of Section 11210, the Executive Director shall stamp all the materials "Filed BCDC" and the date of filing and notify the entity that submitted the proposed amendment of its filing.

(c) If the Executive Director determines that the proposed amendment does not satisfy the requirements of Section 11210, the Executive Director shall transmit to the entity that proposed the amendment a written explanation of why the proposed amendment and supporting materials do not comply with Section 11210.

(d) The filing of a proposed amendment and supporting materials shall constitute submittal of the amendment pursuant to California Public Resources Code Section 29410.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29418 and 29419, Public Resources Code.

**HISTORY**

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

**§ 11212. Processing Amendments to the Local Protection Program or Component Thereof.**

The Commission shall process a proposed amendment to the Suisun Marsh local protection program or to any component thereof in accordance with Sections 11202 through 11208, except that amendments designated as minor by the Executive Director under Sections 11213 and 11214 shall be processed only as provided in Section 11214.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Sections 29418 and 29419, Public Resources Code.

**HISTORY**

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

**§ 11213. Definition of a Minor Amendment.**

A minor amendment to the Suisun Marsh local protection program or any component thereof is an amendment that is consistent with California Public Resources Code Sections 29000 through 29612 and the Suisun Marsh Protection Plan and that is one or more of the following:

(a) changes in wording, maps, or diagrams of any general, specific, or area plan, other policy document, zoning ordinance, zoning district map, regulation, or standard that does not change the designated, allowable, or permitted use, density, or intensity of land use or sphere of influence or boundary of any city; or

(b) changes in any certified management plan or policy document of the Suisun Resource Conservation District or the Solano County Mosquito Abatement District that does not change the permitted or allowable use of any land and does not change any water management program or practice.

NOTE: Authority cited: Section 29418(c), Public Resources Code. Reference: Section 29418(c), Public Resources Code.

**HISTORY**

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

**§ 11214. Designation of an Amendment as Minor.**

(a) If the Executive Director intends to determine that a proposed amendment is minor, he or she shall notify the Commission of this intent by summarizing the proposed amendment and stating the intent as part of the administrative listing of administrative permits and consistency determinations that Section 10620 requires.

(b) The Executive Director shall send the listing to or shall otherwise notify in writing the County of Solano, the Cities of Benicia, Fairfield, and Suisun City, the Solano County Local Agency Formation Commission, the Solano County Mosquito Abatement District, the Suisun Resource Conservation District, the California Department of Fish and Game, the United States Fish and Wildlife Service, and the United States

Bureau of Reclamation at least nine (9) working days before the meeting at which the Commission may comment on the listing.

(c) If two (2) or more members of the Commission object to the Executive Director's proposed determination that the proposed amendment is minor, the determination shall not become effective and the Commission shall process the amendment pursuant to Section 11212.

(d) If less than two (2) members of the Commission object to the Executive Director's proposed determination that the proposed amendment is minor, the proposed determination shall become effective and the amendment shall become effective on the tenth (10th) working day following the meeting at which the amendment was listed.

(e) The Executive Director shall give written notice of final action on the proposed amendment to the entity that proposed the amendment and to all persons who have requested in writing that they receive such notice.

NOTE: Authority cited: Section 29418(c), Public Resources Code. Reference: Section 29418(c), Public Resources Code.

**HISTORY**

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

**§ 11215. Frequency of Amendments.**

No local government, district, nor the Solano County Local Agency Formation Commission shall submit an amendment to the Commission or the Executive Director for certification more frequently than three (3) times during any calendar year.

NOTE: Authority cited: Section 29201(e), Public Resources Code. Reference: Section 29418, Government Code; and Section 65361, Government Code.

**HISTORY**

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).

**Chapter 13. Enforcement Procedures****Subchapter 1. General Provisions****§ 11300. Grounds for the Issuance of Cease and Desist Orders.**

Any one of the following actions shall constitute grounds for the issuance by the Commission of a cease and desist order: (1) the undertaking or threat to undertake an activity that requires a Commission permit without having obtained a Commission permit, (2) the violation of a term or condition of a Commission permit, or (3) the inclusion of inaccurate information in a permit application or at the public hearing on the permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638, Government Code; and Section 29601, Public Resources Code.

**HISTORY**

1. Renumbering and amendment of former Section 11300 to Section 11301, and new Section 11300 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

**§ 11301. Grounds for Permit Revocation.**

Any one of the following actions shall be grounds for the complete or partial revocation of a Commission permit:

- (1) the violation of a term or condition of a permit,
- (2) the violation of a Commission cease and desist order or an Executive Director's cease and desist order, or
- (3) the inclusion of inaccurate information in a permit application or at the public hearing on a permit application.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d); Government Code; Section 29601, Public Resources Code; and *Sunset Amusement Company v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80.

**HISTORY**

1. Renumbering and amendment of former Section 11301 to Section 11303, and renumbering and amendment of former Section 11300 to Section 11301 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

## § 11302. Grounds for the Imposition of Administrative Civil Penalties.

Any one of the following actions shall constitute grounds for the imposition of civil penalties by the Commission:

- (1) the undertaking of any activity that requires a Commission permit without having obtained the Commission permit or
- (2) the violation of any term or condition of a Commission permit.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641.5, Government Code; and Sections 29610–29611, Public Resources Code.

### HISTORY

1. New section filed 5–18–87; operative 6–17–87 (Register 87, No. 30).
2. Repealer and new section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

## § 11303. Referral to the Attorney General by the Commission or the Executive Director.

(a) A violation of any one of the following shall be grounds for the referral of the violation by the Commission or the Executive Director to the Attorney General's Office without the Commission's having issued either a cease and desist order or a permit revocation order: (1) the McAtteer–Petris Act, (2) the Suisun Marsh Preservation Act, (3) the Federal Coastal Zone Management Act, or (4) a term or condition of a Commission permit.

(b) In addition, a violation of either a Commission cease and desist order or a Commission permit revocation order shall also be grounds for the referral of the violation by either the Commission or the Executive Director to the Attorney General's Office.

(c) A referral made to the Attorney General's Office pursuant to subsections (a) and (b) may include any other unresolved, alleged violation including those of the type enumerated in Section 11386.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d), Government Code; and Section 29601, Public Resources Code.

### HISTORY

1. Repealer of former Section 11303, and renumbering and amendment of former Section 11301 to Section 11303 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment filed 5–22–2003; operative 6–21–2003 (Register 2003, No. 21).

## Subchapter 2. Procedures for the Issuance of Cease and Desist Orders, Permit Revocation Orders, and Civil Penalty Orders

### Article 1. Definitions

#### § 11310. Definitions.

The following definitions are applicable to this chapter:

(a) "Complaint," as used in subsection (b) of Section 66641.6 of the Government Code, means the document that initiates the possible imposition of administrative civil penalties by the Commission. A complaint shall contain the information required by Government Code Section 66641.6(b) and otherwise follow the format for a staff violation report as set out in Appendix H.

(b) "Enforcement committee," as used in this chapter, means a committee that the Commission has established pursuant to Commission resolution or by appointment by the Chair without Commission objection to assist the Commission in carrying out its enforcement responsibilities.

(c) "Enforcement hearing," as used in this chapter, means any public hearing held before a hearing officer, the enforcement committee, or the Commission as part of a Commission enforcement proceeding.

(d) "Hearing Officer," means any person appointed by the Commission to receive evidence, hear arguments, make findings of fact, and recommend to the Commission what action it should take on an enforcement matter.

(e) "Person," as used in Sections 66637 through 66642 of the Government Code and in this chapter, means any individual, firm, association, organization, partnership, business trust, corporation, company, or governmental agency.

(f) "Respondent," as used in this chapter, means a person to whom the Commission staff has issued a violation report and a statement of defense form in accordance with Section 11321(c).

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

### HISTORY

1. Renumbering and amendment of former Section 11310 to Section 11710, and renumbering and amendment of Section 11010 to Section 11310 filed 5–18–87; operative 6–17–87 (Register 87, No. 30). For prior history, see Registers 86, No. 39 and 73, No. 50.
2. Renumbering of former subsection (a) to subsection (e), repealer of former subsections (b) and (c), new subsections (a)–(d), and renumbering of former subsection (d) to subsection (f) filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

## Article 2. Commission Cease and Desist Orders, Permit Revocation Orders, and Civil Penalty Orders

#### § 11320. Staff Investigation and Discovery.

As part of any enforcement investigation, the Executive Director may issue subpoenas and the staff may send interrogatories, conduct depositions, and inspect property at any time.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11180–11181, 66637, 66638 and 66643, Government Code; and Section 29601, Public Resources Code.

### HISTORY

1. Repealer of former Section 11320, and renumbering and amendment of former Section 11331 to Section 11320 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

#### § 11321. Commencing Commission Enforcement Proceedings.

(a) If the Executive Director believes that the results of an enforcement investigation so warrant, the Executive Director shall commence Commission enforcement proceedings by issuing at least 45 days prior to holding an enforcement hearing on the matter the following materials to the last known address of each party that the Executive Director believes may be legally responsible in some manner for the alleged violation:

(1) a violation report that complies with the format set out in Appendix H,

(2) a complaint for civil penalties that complies with the format set out in Appendix H if the staff seeks civil penalties, and

(3) a statement of defense form that complies with the format set out in Appendix I. The violation report and complaint for civil penalties can be combined into a single document so long as it contains all the information required for both.

(b) The violation report shall refer to all documents on which the staff relies to provide a prima facie case and give notice that the documents may be inspected at the Commission's office and that copies will be provided with five days prior notice and upon payment of the cost of copying.

(c) Issuance of a violation report shall occur when the violation report is mailed by certified mail to all persons or entities named as a respondent in the violation report. Issuance of a complaint for civil penalties shall occur when the complaint for civil penalties is mailed by certified mail to all persons or entities named as a respondent in the complaint.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.6, Government Code; and Sections 29610–29611, Public Resources Code.

### HISTORY

1. Renumbering and amendment of former Section 11330 to Section 11321 and Section 11322 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

### § 11322. Respondent's Required Response to the Violation Report.

(a) Within thirty-five (35) days of the issuance of the violation report and the statement of defense form, each respondent shall submit to the Commission as its office an original and five copies of the completed statement of defense form and an original (or verified copy) and five copies of all documents that the respondent wants to be made part of the record of the enforcement proceeding, including any declarations under penalty of perjury and any documentary evidence such as letters, photographs, and similar matters. Once submitted, all such declarations and documents shall be permanently retained by the Commission as part of the enforcement record.

(b) If a respondent believes that cross-examination of a person relied on by staff in its violation report is needed to show or contest a fact alleged in the violation report, the respondent shall request such cross-examination in the statement of defense form. The addendum shall list the name of each person the respondent wants to cross examine, all documents about which the respondent wants to cross examine, a description of the area of knowledge about which the respondent wants to cross-examine the person, including a specific reference to the fact or information respondent disputes, the information that respondent believes can be elicited by cross-examination, and the reasons the respondent believes that the information can best be provided by cross-examination rather than by the submittal of declarations or other written evidence.

(c) Within 35 days of the issuance of a complaint for civil penalties and a statement of defense form, each respondent shall submit to the Commission at its office either (1) a certified cashier's check in the amount of the proposed civil penalty or (2) the completed statement of defense form and all documents that the respondent wants to be made part of the record of the enforcement proceeding, including any declarations under penalty of perjury and any documentary evidence such as letters, photographs, and similar matters, and any request to allow cross-examination.

(d) If the staff wants to cross-examine, the staff shall, within seven days of receiving a statement of defense form, mail to all respondents a list of all persons that the staff wants to cross examine, the area or areas of knowledge about which the staff wants to cross-examine the witness, and the information that the staff hopes to elicit in cross-examination.

(e) If the Executive Director sends a violation report and a complaint for civil penalties together, paying the civil penalties will not release the respondent from the possible issuance of a cease and desist order or permit revocation order.

(f) The Executive Director may at his or her discretion extend the 35-day time limit imposed by paragraphs (a) and (c) of this section upon receipt within the 35-day time limit of a written request for such extension and a written demonstration of good cause. The extension shall be valid only to those specific items or matters that the Executive Director identifies to the requesting party as being exempt from the 35-day filing requirement and shall be valid only for such additional time as the Executive Director allows.

(g) If a respondent responds to a complaint for the imposition of administrative civil penalties by submitting a cashier's check in the appropriate amount to the Executive Director in a timely fashion, the Executive Director shall cash the check and list the violation, the amount of the proposed penalty, and the fact that the respondent has agreed to pay the penalty as part of the administrative permit listing within 30 days of receipt of the check.

(h) At the next Commission meeting after receiving the listing, the Commission can object to the amount of a proposed administrative civil penalty that a respondent has paid by voting by a majority of those present and voting. If the Commission so objects, the Executive Director shall return the respondent's money and the respondent shall file his or her completed statement of defense form and supporting documents within 35 days of the Commission's action. Thereafter, the enforcement matter shall proceed according to these regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.6, Government Code; and Section 29610-29611, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11330(d) to Section 11322 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

### § 11323. Distribution of Notice of Enforcement Hearings.

(a) At least ten (10) days prior to the initial enforcement hearing on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed Commission civil penalty order, whether held before the enforcement committee, the Commission, or a hearing officer, the Executive Director shall mail by regular mail a written notice of the date, time, and place of the initial enforcement hearing to all respondents at their last known address and to all members of the public who have requested in writing that they receive such notice, provided that no notice need be mailed to the respondent if the respondent has already received notice of the hearing in a cease and desist order issued by the Executive Director. A meeting notice mailed pursuant to California Government Code Section 11125 will meet this notice requirement.

(b) After the initial enforcement hearing, notice of further enforcement hearings may be given by either announcing the date, time, and place of the further meeting on the record at the close of the preceding enforcement hearing or by mailing written notice of the date, time, and place of the further meeting to all respondents at least 10 days prior to the further enforcement hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5, and 66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11337 to Section 11323 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

### § 11324. Distribution of the Violation Report, Statement of Defense Form(s), and Recommended Enforcement Decision.

At least ten (10) days prior to the enforcement hearing, the Executive Director shall mail by regular mail the following materials to each respondent, and to the committee members if the enforcement hearing will be held before the enforcement committee, to the hearing officer if the enforcement hearing will be held before a hearing officer, or to the Commission if the enforcement hearing will be held before the Commission: (1) the violation report, (2) each completed statement of defense form and the enclosed exhibits, with a notation that indicates if any of the statements have been filed in an untimely fashion, and (3) a recommended enforcement decision that complies with Section 11326.

NOTE: Authority cited: Section 66632(f), Government Code, and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11336 to Section 11324 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

### § 11325. Ex Parte Contacts.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11333 to Section 11325 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Repealer filed 12-27-2004; operative 1-26-2005 (Register 2004, No. 53).

### § 11326. Contents of an Executive Director's Recommended Enforcement Decision.

(a) The Executive Director shall prepare a recommended enforcement decision on a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed civil penalty order.



(b) The Executive Director's recommended enforcement decision shall be in writing and shall include:

(1) a brief summary of (A) any background to the alleged violation, (B) the essential allegations made by staff in its violation report (C) a list of all essential allegations either admitted or not contested by respondent(s), (D) all defenses and mitigating factors raised by the respondent(s), and (E) any rebuttal evidence raised by the staff to matters raised in the statement of defense form with references to supporting documents;

(2) a summary and analysis of all unresolved issues;

(3) a statement of whether the Executive Director has issued a cease and desist order and its expiration date; and

(4) a recommendation on what action the Commission should take; and

(5) the proposed text of any cease and desist order, permit revocation order, or civil penalty order that the Executive Director recommends that the Commission issue.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66642 and 66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11335 to Section 11326 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

### § 11327. Enforcement Hearing Procedure.

Enforcement hearings shall proceed in the following manner:

(a) the Chair shall announce the matter, ask all respondents or their attorneys present to identify themselves for the record, indicate what matters are already part of the record, and announce any imposition of time limits for presentations to be made by the staff, the respondent(s), and the public at the hearing;

(b) the Chair may impose time limits based on the circumstances of the alleged violation(s), the number of other items contained on the meeting agenda, the number of persons who intend to speak, and such other factors as the Chair believes relevant;

(c) the staff shall summarize the violation report and recommended enforcement decision with particular attention to limiting its presentation to issues of controversy;

(d) each respondent shall summarize its position(s) on the matter(s) relevant to the alleged violation or proposed order with particular attention to those issue(s) where an actual controversy exists between the staff and the reported party(s);

(e) other speakers may speak concerning the matter;

(f) presentations made by the staff, a respondent, and other speakers shall be limited to responding to (1) evidence already made part of the enforcement record and (2) the policy implications of such evidence; the committee and the Commission shall not allow oral testimony unless the committee and Commission believes that such testimony is essential to resolve any factual issues that remain unresolved after reviewing the existing written record and whose resolution is essential to determining whether a violation has occurred or to determining what remedy is appropriate. If the committee or Commission allows oral testimony, such testimony shall be taken under oath, and all representatives of the staff and all respondents shall be given a right to cross-examine all witnesses who are allowed to testify and a right to have rebuttal witnesses similarly testify;

(g) cross-examination of any witness whose declaration under penalty of perjury has become part of the enforcement record shall be permitted only if the party who wishes to cross-examine has identified in writing

pursuant either to Section 11322(a) or Section 11322(c) the person to be cross-examined, the area or areas of information into which the cross-examination will delve, and the information sought to be uncovered.

(h) Committee members, a hearing officer, and Commissioners may ask questions at any time during the hearing or deliberations.

(i) the enforcement committee, hearing officer, or Commission shall close the public hearing after the staff, all respondents, and the public have completed their presentations and committee members, the hearing officer, or Commissioners have completed their questioning;

(j) the enforcement committee or Commission shall deliberate and vote on an enforcement matter; and

(k) if a hearing officer has been appointed for an enforcement matter, the hearing officer shall render a written decision that follows the format of an Executive Director's recommended enforcement decision within 14 days of the closing of the enforcement hearing.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11328 to Section 11327 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

### § 11328. Acceptance of Late Evidence.

The introduction of surprise testimony and exhibits at enforcement hearings shall be discouraged. All documents and declarations under penalty of perjury shall be submitted with the completed statement of defense form except to the extent the Executive Director has extended the time for such submittal pursuant to Section 11322(d) or the Commission admits the evidence into the record pursuant to Section 11327(f) and this section. To this end, the Commission, any hearing officer, and the enforcement committee shall not accept into the record or consider any statement of defense form or any written evidence not filed in a timely manner unless the Commission, hearing officer, or enforcement committee finds that (1) the person seeking to introduce the evidence made all reasonable efforts to obtain and submit the evidence in a timely manner and would be substantially harmed if the evidence were not admitted and (2) no other party would suffer substantial prejudice by its admission.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66638 and 66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

### § 11329. Admissibility of Evidence.

(a) Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions.

(b) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action or unless it is in the form of a declaration under penalty of perjury or in the form of another document referred to in a violation report or complaint for the imposition of civil penalties and the declarant or author of the other document is subject to cross-examination as provided in Sections 11321, 11322, and 11327.

(c) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant or unduly repetitious evidence shall be excluded.

(d) The Chair, the enforcement committee chair, or the hearing officer if one has been appointed shall have the final authority to determine whether any evidence whose admissibility is challenged by objection shall be admitted into evidence and become part of the record.

(e) In determining whether to admit testimony or exhibits into the record over objection, the Chair, the enforcement committee chair, or the hearing officer if one has been appointed shall consult with the Deputy Attorney General in attendance at the hearing.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638, 66641.5 and 66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former section 11339 to section 11329 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.
2. Amendment of portions of subsection (a) to create new subsections (b) and (c) and relettering of former subsections (b) and (c) filed 9-3-92; operative 10-5-92 (Register 92, No. 36).

### § 11330. Adoption of an Enforcement Committee or a Hearing Officer Recommended Enforcement Decision.

After the enforcement committee or a hearing officer has closed the enforcement hearing and completed its deliberations, it shall adopt a recommended enforcement decision, which shall include all of the following:

- (a) all of the matters required by Section 11326; and
- (b) any further written report on or explanation of the enforcement proceedings as the enforcement committee or hearing officer believes is appropriate.

The enforcement committee or a hearing officer can adopt with or without change the staff recommended enforcement decision.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11330 to Section 11321 and 11322, and new Section 11330 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

### § 11331. Referral of the Recommended Enforcement Decision to the Commission.

At least ten (10) days prior to the Commission's consideration of a recommended enforcement decision referred to it either directly by the Executive Director, by the enforcement committee, or by a hearing officer, the staff shall mail the recommended enforcement decision to all respondents and to all Commissioners.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11331 to Section 11320, and new Section 11331 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

### § 11332. Commission Action on Recommended Enforcement Decision.

(a) When the Commission acts on a recommended enforcement decision, the Commission shall allow representatives of the staff, each respondent, and members of the public an opportunity to present their respective arguments on the recommendation, subject to such reasonable time limits as the Chair may impose and subject to a prohibition against the introduction of any new evidence unless the Commission proceeds either to remand the matter to the enforcement committee or hearing officer or hold a de novo evidentiary hearing.

(b) Thereafter, the Commission shall do one of the following:

- (1) adopt the recommended enforcement decision without any change in any proposed cease and desist order, permit revocation order, or civil penalty order;

(2) either (A) dismiss the entire matter by voting not to issue any proposed cease and desist order, proposed permit revocation order, or proposed civil penalty order or (B) adopt the recommended enforcement decision with regard to one or more of a proposed cease and desist order, a proposed permit revocation order, and a proposed civil penalty order and dismiss the other proposed order(s) recommended in the recommended enforcement decision by voting not to issue them;

(3) remand the matter to the enforcement committee, hearing officer, or the staff for further action as the Commission directs; or

(4) reject the recommended enforcement decision and decide to consider the entire matter de novo. In this event, the Commission shall continue the public hearing to the next available Commission meeting, when it shall proceed in accordance with the same procedural requirements as the Commission must follow under these regulations pursuant to Section 11327. As part of this de novo proceeding, the Commission can accept additional evidence only in compliance with Section 11327 or if the Commission provides the staff, all respondents, and the public a reasonable opportunity to review and respond to the additional evidence prior to the Commission's de novo review.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Repealer and new section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

### § 11333. Commission Hearing Procedures on Direct Referral of an Enforcement Matter by the Executive Director.

When the Executive Director refers an enforcement matter directly to the Commission rather than to the enforcement committee, the Commission shall follow the procedures set out in Sections 11327 through 11329 and in Section 11334.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11333 to Section 11325, and new Section 11333 filed 10-11-89; operative 11-10-89 (Register 89, No. 30). For prior history, see Register 87, No. 30.

### § 11334. Voting on a Proposed Commission Cease and Desist Order, a Proposed Commission Permit Revocation Order, or a Proposed Commission Civil Penalty Order.

(a) The Commission shall vote on a recommended enforcement decision, a proposed Commission cease and desist order, a proposed permit revocation order, or a proposed civil penalty order by roll call in alphabetical order except that the Chair shall vote last;

(b) Any member may change his or her vote at any time before the Chair announces the final tally; and

(c) The decision of whether or not to issue an order shall be by majority vote of those present and voting.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5-66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Repealer of former Section 11334, and renumbering and amendment of former Section 11341 to Section 11334 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

### § 11335. Staff Report and Recommendation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11335 to Section 11326 filed 10-11-89; operative 11-10-89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

### § 11336. Distribution of Staff Report and Recommendation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11336 to Section 11324 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

### § 11337. Notice of Public Hearing.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11337 to Section 11323 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

### § 11338. Public Hearing Procedure.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11338 to Section 11327 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

### § 11339. Admissibility of Evidence.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 11513 and 66637–66642, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11339 to Section 11329 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

### § 11340. Contents of Cease and Desist Orders.

(a) Cease and desist orders shall be signed by the Executive Director and shall contain the following:

- (1) a statement of whether the Executive Director is issuing the order pursuant to Section 66637 of the Government Code or the Commission is issuing the order pursuant to Section 66638 of the Government Code;
- (2) the names of the person or persons who have undertaken or who are threatening to undertake the activity that is the subject of the order;
- (3) identification of the property where the activity has been undertaken or may be undertaken;
- (4) a description of the activity;
- (5) the effective date of the order;
- (6) the expiration date, if any, of the order;
- (7) any terms, conditions, or other provisions necessary to bring the activity into compliance with the provisions of the McAteer–Petris Act, the Suisun Marsh Preservation Act, or a permit;
- (8) written findings that (1) explain the decision to issue the order and (2) provide the factual and legal basis for the issuance of the order;
- (9) in the case of an order issued by the Executive Director, notice of the date and place of any public hearing to be held on any cease and desist order proposed to be issued by the Commission relating to the same activity if the Executive Director has scheduled one;
- (10) notice that a respondent may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order; and
- (11) such other provisions that the Commission has approved, including provisions relating to:

(A) a disclaimer of any effect of the order upon any duties, rights, or obligations under private agreements or under regulations of other public bodies;

(B) the obligation to conform strictly to the order and the consequences of the failure to do so; and

(C) the fact that the order does not constitute a recognition of property rights.

(b) A cease and desist order can be combined with a permit revocation order or a civil penalty order so long as the combined order contains all the information required under these regulations for both such orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Repealer of former Section 11340, and renumbering and amendment of former Section 11343 to Section 11340 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

### § 11341. Modifications of Cease and Desist Orders Issued by the Executive Director.

The Executive Director may modify a cease and desist order that he or she has issued, but he or she shall not do so in a manner that extends the 90–day expiration period provided for in Section 66637 of the Government Code unless a respondent stipulates in writing to the extension. The Executive Director may, however, issue consecutive cease and desist orders for a persisting violation or a persisting threatened violation.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11341 to Section 11334, and renumbering and amendment of former Section 11344(a) to Section 11341 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

### § 11342. Modification of Cease and Desist Orders Issued by the Commission.

The Executive Director may modify a cease and desist order issued by the Commission if the modification would not be a material alteration of the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11342 to Section 11370, and renumbering and amendment of former Section 11344(b) to Section 11342 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

### § 11343. Appeal from the Modification of a Commission Cease and Desist Order.

(a) A person who has been personally served with a Commission cease and desist order or to whom the Commission has mailed by certified mail a cease and desist order and to whom the order is directed may appeal to the Commission any modification of the order by the Executive Director.

(b) If the appeal is complete and filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals to modifications of a cease and desist order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641.5–66641.6, Government Code; and Section 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11343 to Section 11340, and renumbering and amendment of former Section 11344(c) to Section 11343 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

### § 11344. Amendments to Cease and Desist Orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637–66642, Government Code; Section 29601, Public Resources Code; and *Bel Mar Estates v. California Coastal Commission* (1981) Cal. App. 3d 936, 940.

#### HISTORY

1. Renumbering and amendment of former Section 11344 to Sections 11341, 11342, and 11343 filed 10–11–89; operative 11–10–89 (Register 89, No. 43). For prior history, see Register 87, No. 30.

**§ 11350. Contents of Permit Revocation Orders.**

(a) Commission permit revocation orders shall be signed by the Executive Director and shall contain the following:

(1) the names of the person or persons who have violated a term or condition of a Commission permit or a Commission cease and desist order or who have misstated any information on a permit application or at a public hearing;

(2) an identification of the term or condition of a permit or a cease and desist order that was violated, the information that was misstated on the permit application;

(3) the effective date of the order;

(4) the work and uses that are no longer authorized and the date by which any corrective actions or termination of uses must occur;

(5) any terms, conditions, or other provisions that the Commission may determine that, if complied with, could avoid revocation of the permit;

(6) written findings that (A) explain the decision to issue the permit revocation order and (B) provide the factual and legal basis for the issuance of the order;

(7) notice that an aggrieved party can file with the superior court a petition for a writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

(b) A permit revocation order can be combined with a cease and desist order and a civil penalty order so long as the combined order contains all the information required by these regulations for both types of orders.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66638 and 66641, Government Code; and Section 29601, Public Resources Code.

**HISTORY**

1. New section filed 5-18-87; operative 6-17-87 (Register 87, No. 30).
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

**§ 11351. Modification of Permit Revocation Orders.**

The Executive Director may modify a permit revocation order if the modification would not materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d), Government Code; and Section 29600, Public Resources Code.

**HISTORY**

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

**§ 11352. Appeal from Modification of a Permit Revocation Order.**

(a) A person to whom the Commission has issued a permit revocation order may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of the personal service or mailing by certified mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is complete and filed within ten days of the personal service or mailing by certified mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals to modifications of a permit revocation order by the Executive Director cannot be filed more than ten days after the personal service or mailing by certified mail of the modification.

NOTE: Authority cited: section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Section 66641(d), Government Code; and Section 29600, Public Resources Code.

**HISTORY**

1. New section filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

**§ 11360. Preparation and Execution of Commission Cease and Desist Orders and Permit Revocation Orders.**

The Executive Director shall prepare and sign a cease and desist order or a permit revocation order authorized by the Commission no later than the fifth (5th) working day following approval.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66642, Government Code; and Section 29601, Public Resources Code.

**HISTORY**

1. Renumbering and amendment of Section 11051 to Section 11360 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.

**§ 11361. Issuance.**

"Issuance" of a cease and desist order, a permit revocation order, a civil penalty order, or of any modification of such orders, is complete when the Executive Director executes the original copies of the order or modification and they are stamped "Issued BCDC" with the date.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Sections 29600 and 29601, Public Resources Code.

**HISTORY**

1. Renumbering and amendment of Section 11050 to Section 11361 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

**§ 11362. Service of Copies.**

(a) Persons to Whom the Order or Modification is Issued. The Executive Director shall cause to be personally served or mailed by certified mail an original copy of a cease and desist order, a permit revocation order, and of any modifications to each person to whom the order is being issued no later than the second working day following the date of issuance. The Executive Director shall cause to be personally served or mail by registered mail a civil penalty order or modification to such order to each person to whom the order is being issued no later than the second working day following the date of issuance.

(b) Other Interested Persons. The Executive Director shall personally serve on or shall mail by regular mail a copy of a cease and desist order or a permit revocation order authorized by the Commission and of any modification to each person who appeared at the hearing and submitted a written request for a copy as soon as possible after the Commission authorized the order or modification. (For civil penalty orders, see subdivision (d) of Government Code Section 66641.6.)

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66637-66638 and 66641.6, Government Code; and Sections 29600 and 29601, Public Resources Code.

**HISTORY**

1. Renumbering and amendment of Section 11052 to Section 11362 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 73, No. 50.
2. Amendment filed 10-11-89; operative 11-10-89 (Register 89, No. 43).

**§ 11370. Enforcement Record.**

The record of an enforcement proceeding shall consist of

(a) the violation report, including all documents referred to in the report;

(b) any complaint for civil penalties;

(c) all timely filed statement of defense form(s);

(d) all untimely filed statement of defense forms that have nevertheless been admitted into evidence;

(e) the staff recommended enforcement decision, including all documents referred to in the recommendation,

(f) minutes of all enforcement committee and Commission enforcement hearings and deliberations, provided, that if eyewitness or expert testimony is allowed at the enforcement hearing, a verbatim transcript of such testimony shall also be included;

(g) all evidence submitted but rejected because it was not filed in a timely manner or violated Section 11328, with a notation that it was rejected and is included in the record only so that a reviewing court will know what evidence was rejected;

(h) any enforcement committee's or hearing officer's recommended enforcement decision,

(i) any order that the Commission issues,

- (j) all other materials maintained in the Commission's file for the enforcement matter,
- (k) such other permit or other Commission files as have explicitly been made a part of the record,
- (l) the McAteer-Petris Act,
- (m) the San Francisco Bay Plan,
- (n) the Suisun Marsh Preservation Act,
- (o) the Suisun Marsh Protection Plan,
- (p) the Suisun Marsh Local Protection Program, and
- (q) the Commission's regulations.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29210(e), Public Resources Code. Reference: Sections 66639–66640 and 66641.7, Government Code; and Sections 29600 and 29601, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of former Section 11342 to Section 11370 filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

### § 11380. Contents of Complaint for Administrative Imposition of Civil Penalties.

The complaint shall follow the same format as required for a Violation Report in Appendix H to these regulations.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Section 66641.6, Government Code.

#### HISTORY

1. New section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

### § 11381. Commission Hearing on Complaint for Administrative Imposition of Civil Penalties.

(a) The Commission shall comply with the requirements of Cal. Govt. Code Section 66641.6(b) by either (1) hearing the matter itself within 60 days of the service of the complaint or (2) by having the enforcement committee hold a hearing within 60 days of the service of the complaint.

(b) The Executive Director shall determine whether to refer a complaint for the administrative imposition of civil penalties to the Commission or to the enforcement committee.

(c) When the Executive Director determines whether to refer a complaint for civil penalties to the Commission or to the enforcement committee, he or she shall consider the following factors:

- (1) the time that it would take the Commission or enforcement committee to complete consideration of the complaint,
- (2) the relative workloads of the Commission and the enforcement committee at the time,
- (3) whether the complaint involves any policy issues that should be determined by the Commission initially,
- (4) whether the Commission or the enforcement committee has already heard any enforcement matter that is related to the complaint, and
- (5) any request by the Commission that it hear the matter directly.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Section 66641.6, Government Code.

#### HISTORY

1. New section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

### § 11382. Further Procedures for Commission Review of Complaints for the Issuance of Civil Penalty Orders.

The Commission shall follow the procedures established by Sections 11310 and 11321 through 11334 and Sections 11361 through 11370 of these regulations when it considers recommended enforcement decisions from either the staff or the enforcement committee or a hearing officer relative to the possible administrative imposition of civil penalties.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.6 and 66641.9, Government Code.

#### HISTORY

1. New section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

### § 11383. Contents of a Commission Civil Penalty Order.

(a) A Commission civil penalty order shall be signed by the Executive Director and shall contain the following:

- (1) the name(s) of the person(s) required to pay the civil penalty;

(2) the amount of the civil penalty;

(3) the date by which the civil penalty must be paid;

(4) written findings that (1) explain the decision to issue the civil penalty order and (2) provide the factual and legal basis for the issuance of the order, and

(5) notice that a person to whom the Commission issues a civil penalty order may file with the superior court a petition for writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure within thirty (30) days after service of a copy of the order.

(b) A civil penalty order can be combined with a cease and desist order or a permit revocation order so long as the information required under these regulations for both is contained in the combined order.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.6 and 66641.9, Government Code.

#### HISTORY

1. New section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

### § 11384. Modification of a Commission Civil Penalty Order.

The Executive Director may modify a civil penalty order if the modification would not alter the amount of the penalty or otherwise materially change the order.

NOTE: Authority cited: Section 66632(f), Government Code. Reference: Sections 66641.5, 66641.6 and 66641.9, Government Code.

#### HISTORY

1. New section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

### § 11385. Appeal from Modification of a Permit Revocation Order.

(a) A person to whom the Commission has issued a civil penalty order may appeal to the Commission any modification of the order by the Executive Director by filing within ten (10) days of the date of personal service or mailing by registered mail of the modification a written statement that the party is appealing the modification and the reasons for the appeal.

(b) If the appeal is complete and filed within ten days of the personal service or mailing by registered mail of the modification to the order, the appeal shall stay the effect of the modification, but the previously effective order shall remain in effect.

(c) Appeals to modifications of a civil penalty order by the Executive Director cannot be filed more than ten days after the personal service or mailing by registered mail of the modification.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66641.5, 66641.6 and 66641.9, Government Code.

#### HISTORY

1. New section filed 10–11–89; operative 11–10–89 (Register 89, No. 43).

### § 11386. Standardized Fines.

(a) This Section shall apply to an enforcement action if the Executive Director determines:

- (1) that an alleged violation is one of the types identified in subsection 11386(e);
- (2) that the alleged violation has not resulted in significant harm to the Bay's resources or to existing or future public access; and
- (3) that the alleged violation can be corrected in a manner consistent with the Commission's laws and policies.

(b) Except as provided in subsection (g), if this Section applies to an enforcement action, the Executive Director shall mail a written notice to the person(s) believed to be responsible for the alleged violation that contains all of the following information:

- (1) the nature of the alleged violation and each and every action that must be taken to correct the alleged violation;
- (2) the fact that if the alleged violation is fully corrected within 35 days of the mailing of the notice, the Commission shall not impose any civil penalty; and
- (3) the fact that if the alleged violation is not fully corrected within 35 days of mailing of the notice, the person believed to be responsible for the alleged violation may be subject to the payment of a civil penalty and

may resolve the penalty portion of the alleged violation by paying the standardized fine specified in subsections (e), and (f) without having to go through a formal enforcement proceeding pursuant to Sections 11300 through 11385 except as provided in subsection (h).

(c) Except as provided in subsection (g), if the person believed to be responsible for the alleged violation completes each and every corrective action specified in the notice pursuant to subsection (b) within thirty-five (35) days after the mailing of the notice, the Commission shall not impose any standardized or other fine.

(d) Except as provided in subsections (g) and (h), if the person believed to be responsible for the alleged violation fails to complete one or more of the corrective actions required by the notice pursuant to subsection (b) within thirty-five (35) days after the date of the mailing of the notice, the responsible person may resolve the penalty portion of the alleged violation by completing each and every action required by the notice sent pursuant to subsection (b) and by paying a fine in the amount provided in subsections (e) and (f).

(e) The following standardized civil penalties shall apply to the following types of alleged violations:

(1) for the failure to return an executed Commission permit before commencing the work authorized by the permit:

(A) if the fully executed permit is returned between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00); or

(B) if the fully executed permit is returned more than sixty-five (65) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the sixty-fifth (65) day to the date the fully executed permit is received by the staff.

(2) for the failure to submit any document other than an executed Commission permit in the form, manner or time required by a Commission permit:

(A) if a required document is submitted between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00) per document;

(B) if a required document is submitted between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) per document; or

(C) if a required document is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) for each document plus ONE HUNDRED DOLLARS (\$100.00) per day for each document, from the ninety-sixth (96th) day to the date the document is received by the staff.

(3) for the failure to comply with any condition required by a Commission permit not covered by subsections (e)(1) and (e)(2):

(A) if corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00) for each violation of each separate permit requirement; or

(B) if corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) for each violation of each separate permit requirement; or

(C) if corrected more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00) for each violation of each separate permit requirement, plus ONE HUNDRED DOLLARS (\$100.00) per day for each violation, from the ninety-sixth (96th) day to the date the required improvements are provided.

(4) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by an administrative permit:

(A) if either a filable application is submitted between thirty-six (36) and sixty-five (65) days and a permit is obtained within one hundred and

fifty-five (155) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): TWO THOUSAND DOLLARS (\$2,000.00);

(B) if either a filable application is submitted between sixty-six (66) and ninety-five (95) days and a permit is obtained within one hundred and eighty-five (185) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): FIVE THOUSAND DOLLARS (\$5,000.00);

(C) if a filable application is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected within the same time limits: FIVE THOUSAND DOLLARS (\$5,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the ninety-sixth (96th) day to the date a permit is obtained or the activity is completely corrected.

(5) for the failure to obtain a Commission permit prior to undertaking any activity that can be authorized by a regionwide permit:

(A) if either a filable application is submitted between thirty-six (36) and sixty-five (65) days and a permit is obtained within one hundred and fifty-five (155) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between thirty-six (36) and sixty-five (65) days after the date of the mailing of the notice required by subsection (b): ONE THOUSAND DOLLARS (\$1,000.00);

(B) if either a filable application is submitted between sixty-six (66) and ninety-five (95) days and a permit is obtained within one hundred and eighty-five (185) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected between sixty-six (66) and ninety-five (95) days after the date of the mailing of the notice required by subsection (b): TWO THOUSAND DOLLARS (\$2,000.00);

(C) if a filable application is submitted more than ninety-five (95) days after the date of the mailing of the notice required by subsection (b) or the unauthorized activity is completely corrected within the same time limits: TWO THOUSAND DOLLARS (\$2,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day from the ninety-sixth (96th) day to the date a permit is obtained, or the unauthorized activity is completely corrected.

(6) for the placement of fill, the extraction of materials or a change in use that could not be authorized under the Commission's laws and policies but is an activity similar in size and scope to the activities listed in Sections 10601(a) through 10601(e):

(A) if the violation is corrected and the area restored to its prior status between thirty-six (36) and sixty-five (65) days after the mailing of the notice required by subsection (b): THREE THOUSAND DOLLARS (\$3,000.00);

(B) if the violation is corrected and the area restored to its prior status between sixty-six (66) and ninety-five (95) days after the mailing of the notice required by subsection (b): EIGHT THOUSAND DOLLARS (\$8,000.00);

(C) if the violation is corrected and the area returned to its prior status more than 95 days after the mailing of the notice required by subsection (b): EIGHT THOUSAND DOLLARS (\$8,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per day to the date the violation is completely corrected.

(f) A person believed to be responsible for any alleged violation must pay double the amount listed in subsection (e) to resolve the civil penalty portion of the alleged violation if that person has previously paid any standardized fine pursuant to section 11386 within the five years prior to resolution of the alleged violation.

(g) If a violation resolved pursuant to subsection (c) is repeated by the same person within five years of the resolution of the prior violation, subsections (c), (e), and (f) shall not apply. Instead, the person believed to



be responsible for the subsequent alleged violation may resolve the civil penalty portion of the subsequent alleged violation by paying ONE HUNDRED DOLLARS (\$100.00) per day for each day the subsequent alleged violation occurs or persists.

(h) If the person responsible for the alleged violation does not complete all the required corrective actions and pay the appropriate standardized civil penalties within the time limits specified by the Executive Director or, if no time limit is specified, within 125 days of the notice mailed pursuant to subsection (b), the Executive Director may commence enforcement proceedings in accordance with Sections 11300 through 11385. If the Executive Director determines that an alleged violator has not made a good-faith effort to correct an alleged violation, the Executive Director may terminate the opportunity for settlement using the standardized fine process thirty-five (35) days after mailing a notice stating that the process will no longer be available.

(i) After the violation has been completely resolved, if any person subject to the standardized civil penalties listed in subsections (e), (f), and (g) believes that the amount is inappropriate, that person can appeal the proposed amount of the penalty to the Executive Director and the Chair, who can reduce the amount of the standardized civil penalty to an amount that they believe is appropriate.

(j) If any person subject to the standardized civil penalties listed in subsections (e), (f), and (g) believes that the time limit established pursuant to subsection (h) is inappropriate, that person may appeal the time limit to the Executive Director and the Chair, who can modify the time limit as they believe appropriate.

(k) Any person believed to be responsible for an alleged violation is entitled to a formal enforcement hearing according to sections 11300 through 11385 if that person believes it is necessary to fairly determine the appropriate remedy or civil penalty amount.

NOTE: Authority cited: Section 66632(f), Government Code; and Section 29201(e), Public Resources Code. Reference: Sections 66632(f) and 66641.5,

Government Code; and Sections 29201(e) and 29610, Public Resources Code.

#### HISTORY

1. New section filed 2-26-93; operative 3-29-93 (Register 93, No. 9).
2. Amendment filed 6-26-97; operative 7-26-97 (Register 97, No. 26).
3. Amendment of section and NOTE filed 12-9-98; operative 1-8-99 (Register 98, No. 50).
4. Amendment filed 5-22-2003; operative 6-21-2003 (Register 2003, No. 21).

## Chapter 14. Marsh Development Permits Issued by Local Governments and Appeals Therefrom

### Subchapter 1. Marsh Development Permits Issued by Local Governments

#### Article 1. Application

##### § 11400. Application of Chapter.

This Chapter shall govern the issuance of a marsh development permit or any other local permit that incorporates the provisions of a marsh development permit, hereinafter referred to as "a marsh development authorization," by local governments pursuant to California Public Resources Code Section 29502(a) and appeals from marsh development authorizations issued by local governments.

NOTE: Authority cited: Sections 29201(e) and 29521, Public Resources Code. Reference: Section 29502, Public Resources Code.

#### HISTORY

1. Renumbering and amendment of Section 11225 to Section 11400 filed 5-18-87; operative 6-17-87 (Register 87, No. 30). For prior history, see Register 86, No. 39.

[The next page is 539.]